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September 9, 2004

Department of Ecology  
Water Quality Program

SEP 13 2004

Industrial Stormwater General Permit  
Washington State Department of Ecology  
P.O. Box 47600  
Olympia, Washington 98504-7600

**SUBJECT: Washington State Department of Ecology  
Draft Modified Industrial Stormwater General Permit**

Dear Sir or Madam:

Del Monte Foods (Del Monte) has reviewed the Department of Ecology (DOE) draft "Modified Industrial Stormwater General Permit" issued for public comment on August 18, 2004.

Del Monte believes that it is prudent from a scientific, technical, legal, and planning perspective that at least five years of stormwater quality data is needed to fully understand site limitations and that this should be the primary focus of this five year permit. The next five year permit should focus on setting action levels, pollutant limits, compliance schedules, and implementing treatment at sites as needed. Based on recent passage of Senate Bill ESSB 6415, it is apparent that the state legislature also shares in our view.

During this permit cycle we believe all efforts should be focused on collection of scientifically valid stormwater quality data, developing an understanding of seasonal variations in stormwater quality at sites, identifying problem areas at sites, improving stormwater pollution prevention plans, better employee training, and the formulation of technically sound, cost-effective, and low maintenance measures to correct pollution problems at sites.

Unfortunately, the main focus of the subject modified permit is on setting action levels that are loosely scientifically based but form the basis for regulatory agencies and third parties to take enforcement and legal actions against industries, highly reactive levels of response that are not consistent with risks posed to the environment, and layers of regulatory reporting that will divert limited monies that could be better spent on capital projects that actually improve stormwater quality.

Nevertheless, be assured that we remain committed to protecting all waterways in the vicinity our seasonal fruit and vegetable processing plants in Washington and appreciate

the DOE's efforts to try to meet all interested party needs in the drafting of the modified permit. Our specific comments pertaining to the subject draft modified permit are provided below for your consideration.

**1. S3E – Stormwater Discharges to Impaired Water Bodies**

- Since many existing industrial dischargers are just now beginning to find out that their stormwater is discharged to Total Maximum Daily Load (TMDL) water ways and that they need to sample for new parameters, it is arbitrary to require these existing discharges to instantly comply with applicable TMDL determinations.

Specifically, industries that discharge to TMDL water ways need time to collect and analyze data and to implement appropriate mitigative measures. However, appropriate mitigative measures can not be properly designed without fully understanding site conditions and this can only be gained by collecting five years of baseline quality data. More specifically we need to keep in mind that stormwater discharged from industrial sites is not like process wastewater discharged from a carefully operated and controlled treatment plant with a distinct discharge point.

As for existing facilities that discharge to 303(d) limited waters, TMDL determinations for applicable stormwater discharges should also be eliminated until May 2009. If some relief is not gained here, this will likely place some existing dischargers in instant violation of the permit and potentially subject them to costly enforcement actions and lawsuits before the full impacts of site stormwater quality on receiving waters is fully understood and the discharger has had the time to make needed adjustments in operations. We think all would agree that costly enforcement actions and citizen suits will divert limited public and private resources that could be better spent on correcting pollution problems at sites.

**2. S4A – Stormwater Sampling Requirements**

- We operate plants in the dry eastern Washington climate where little if any rain falls and we have been able to collect representative stormwater samples. Therefore, we do not agree that sampling requirements need to be modified to gain additional samples statewide. Nevertheless, to avoid the collection of biased samples and to gain samples that can be compared between sampling events at sites as well as with other industry types in the state, stormwater samples really need to be collected in a consistent manner statewide or by state region (i.e., eastern and western). Unfortunately, the sampling guidelines as spelled out in this section of the draft permit will generate biased data that will not help affected parties accurately gauge stormwater quality on a site-specific and/or statewide basis. At sites, data needs to be collected consistently so that improvements in stormwater quality attributable to implementation of best management practices

are well understood from quarter to quarter and season to season. Collection of biased data will ultimately lead to poor management and regulatory decisions which can lead to costly legal challenges and consulting fees for industries. Accordingly, we believe the sampling requirements in the current effective permit should remain unchanged.

- If you determine to proceed with the sampling guidelines, we urge you to rewrite the second sentence of Item S4A3 that begins “In the alternative, the storm event should have an intensity....” because it is confusing as written (particularly should “0/1” in this sentence be “0.1”).
- Please note that guidelines placed in permits in effect become permit requirements. Therefore, from our perspective it is best for all concerned parties that the words “possible” and “should” be removed and be replaced with “must” or “shall.” Otherwise we question how a sample result can be validated from a legal and regulatory standpoint. In other words, there has to either be a right or wrong way to collect a stormwater sample (i.e., there should be no gray in between because this can lead to costly and time-consuming disputes that do not necessarily improve stormwater quality at sites). We suggest that you review the U.S. Environmental Protection Agency’s “National Pollutant Discharge Elimination System Storm Water Multi-Sector General Permit for Industrial Activities” for guidance here.
- We are very concerned with regard to why industries should be expected to mobilize limited resources and be expected to try to sample any storm event that produces less than 0.1 inches in magnitude. Note that the U.S. Environmental Protection Agency’s “National Pollutant Discharge Elimination System Storm Water Multi-Sector General Permit for Industrial Activities” does not require this and we are unaware of any other states in the nation that do either. Further, since stormwater data will be compared to benchmark values, action levels, and TMDL limits for purposes of determining compliance, it is our opinion that no one should be expected to sample and test low flow or negligible stormwater events that likely have no impact on area waterways from a pollutant standpoint anyway. Specifically, unlike continuous wastewater discharges, runoff volumes and pollutant concentrations (among other things) vary dramatically over the course of a storm and over the wet season. For example, a storm producing a high volume of runoff with low pollutant concentrations may ultimately release a greater total quantity of pollutants than a brief storm with high pollutants.
- If you determine to proceed with the sampling guidelines, please be advised that the guidelines will be in direct conflict with the DOE publication “How To Do Stormwater Sampling, A Guide for Industrial Facilities” as well as with the DOE publication “Guidance Manual for Preparing/Updating a Stormwater Pollution Prevention Plan for Industrial Facilities.” Accordingly, both of these publications will also have to be amended for consistency and legal reasons.

### 3. **S4C – Response to Monitoring Results Above Permit Benchmark Values**

- We concur that facilities need to routinely review stormwater quality data and react accordingly to correct potential pollution problems at sites. Accordingly, we are in full agreement with the “Level One Response.” We also think that this level of response in this five-year permit cycle sufficiently satisfies the intent of Senate Bill ESSB 6415 that requires the permit include an enforceable adaptive management process. Further, we believe this because Senate Bill ESSB 6415 eliminated numeric limitations for existing facilities that discharge to 303(d) limited waters until May 2009.
- We appreciate the intent of the “Action Levels” and “Levels of Response Two and Three.” However, they clearly circumvent the intent of Senate Bill ESSB 6415. Specifically, the “Action Levels” are in effect numeric limitations and will ultimately be used by parties to take enforcement and legal actions against industries in conflict with Senate Bill ESSB 6415. We agree that facilities need and should cleanup their operations, but question the significant actions required in Levels Two and Three in response to two and four data points that may or may not accurately reflect a pollution problem at a site.
- If you determine to proceed with “Levels of Response Two and Three,” the need to proceed with these significant and likely costly requirements should be based on at least eight data points and preferably 20 data points or five years of data for statistical validity purposes (see page 33 of DOE Response to Comments for Industrial Stormwater General Permit Publication Number 02-10-045). This is stated because this much data will likely accurately represent baseline conditions as well as the seasonality of stormwater quality at sites from which sound strategies for improving stormwater quality can be derived. For example, at some sites the data may show that stormwater needs to be treated during certain sampling quarters, but not during other sampling quarters. Treatment typically is expensive and should only be required at sites that have a true pollution problem that can not be rectified through better housekeeping, etc. Again, we believe it is prudent from a scientific, technical, legal, and planning perspective to gain good data this permit cycle to allow characterization of sites and focus on treatment schemes during the next permit cycle.
- We appreciate the thought process and time that was probably devoted to deriving the numeric “Action Levels” and do not necessarily disagree with the values. However, since major decisions will be derived based on these numbers, we believe that these values should be based on real stormwater quality data collected in the State of Washington. This is particularly true for the metals since values listed therein were calculated based on State of California highway runoff data that may or may not be appropriate to the various industrial operations covered by the permit. Again, we believe that it is prudent to collect scientifically valid stormwater quality data this permit cycle and focus on developing “Action Levels” and implementing treatment where needed in the next permit cycle.

- If you determine to proceed with the "Action Levels," the table should be modified to clearly indicate "Nitrate/Nitrite" as "Nitrate/Nitrite Nitrogen" and "Phosphorus" as "Total Phosphorus."

#### **4. S5F – Reporting and Recordkeeping Requirements**

- It should be the primary responsibility of the DOE to respond to public requests for review and reproduction of facility stormwater pollution prevention plans, monitoring data, etc., which we routinely submit to the DOE. In regard to our plants in Washington, these plants are not staffed to quickly accommodate direct citizen requests for information. Further, security is a major concern at all of our food processing plants nationwide. We believe that the significant permit fees paid to the DOE should adequately cover this historic state responsibility.

Thank you for the opportunity to review the draft modified permit. If you have any questions, please do not hesitate to contact me at the above address or at (925) 944-7318.

Sincerely,

**DEL MONTE CORPORATION**



Timothy P. Ruby  
Environmental Water Manager

cc: Mike Fuest  
David Meek  
Kelly Bay  
Steve Erickson  
Ryan Herrington